

SB 134 ELECTRONIC PRESCRIBING

(Updated July 13, 2012)

In 2010 the Drug Enforcement Administration (DEA) published its interim final rule (IFR) on electronic prescribing of controlled substances (EPCS). Since that time software vendors have been working to make sure that the prescriber's and pharmacy software is compliant with the new rule as it relates to controlled substances.

SB 134 was passed in the 2013 Legislative Session. It put the same directives in Kansas law as that required by the DEA's rule. SB 134 did not place any new requirements on prescribers or pharmacies. The technical requirements of the DEA rule were very extensive so it has taken the software vendors a lot of time to get compliant. For instance, before a prescriber can send a "legal" electronic prescription for a controlled substance to the pharmacy its software vendor must have provided the prescriber a certificate that shows the software vendor passed a third-party audit. It is called a Third-party Audit or Certificate.

The Third party auditors are companies such as Price Waterhouse Coopers, NetSPI, KPMG, Deloitte, Chief Security, Brightline, BDO, or Assurance Concepts. This list is not all inclusive, but these companies understand what the DEA is requiring.

As of today there are several software vendors who have completed the third party audit and have provided certificates to their prescribers. Those vendors are **DrFirst, NewCrop, NextGen, and RXNT** for prescribers. Pharmacy software vendors who have completed the third party audit are **Cerner Etreby, Rite Aid, SUPERVALU, and Walgreens**. To find out whether your software vendor has fulfilled the audit task, ask them for documentation of its audit. The DEA requires that the software vendor give the prescribers and pharmacies a copy of the certificate upon request. If you are a prescriber you will need to show a copy of the certificate to the pharmacy so that they can see that you are eligible to send electronic prescriptions for controlled substances. If you do not have a certificate yet the pharmacy will be required to verify your electronic prescription. This is required by federal and state law so prescriber's need to understand that if their vendor has not provided them with a certificate then they are not eligible to send an electronic prescription for controlled substances.

Electronic signatures are permitted for noncontrolled substance prescriptions. If the prescription is for a controlled substance the signature can be electronically generated only if the prescriber's software vendor has provided the third party audit certificate. Otherwise, all controlled substance electronic prescriptions need to be signed manually by the physician.

The law states that the prescriber is responsible for prescriptions that come out of his or her office. If the transmission is generated by someone other than the prescriber the law requires a first and last name of the prescriber's agent. This applies to all prescriptions, not just controlled substances. If the agent does not want to give their last name they need to let their prescriber know that they cannot be his or her agent. If the transmission line is blank the pharmacy may assume that the prescriber is transmitting the prescription. The pharmacy is not required to contact the prescriber to see whether the transmission was completed correctly. That responsibility lies with the prescriber since he or she is responsible for everything that comes from their office.

If the prescriber is a mid-level practitioner the electronic prescription shall state the name and address of the supervising physician. This is required under the Nursing Act and the Healing Arts Act. There will be no exceptions for electronic prescribing. If the midlevel practitioner cannot complete the transmission with this information they need to continue using hard copy prescriptions that contain this information.

SB 134 did not make any changes to the law. It merely reiterated 21 CFR § 1311.100 *et seq.* The Board of Pharmacy would encourage everyone to review the federal law so that they can fully understand how to be compliant with the electronic prescribing regulations.